



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
FAUQUIER COUNTY PUBLIC SCHOOLS
FOR THE
MARY WALTER ELEMENTARY SCHOOL
SEWAGE TREATMENT PLANT
VPDES PERMIT NO. VA0064726**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Fauquier County Public Schools, regarding the Mary Walter Elementary School Sewage Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Authority" means the Fauquier County Water and Sanitation Authority.
3. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. "BOD" means Biochemical Oxygen Demand.

5. "County" means Fauquier County Public Schools, a political subdivision of the Commonwealth of Virginia. The Fauquier County Public Schools is a "person" within the meaning of Va. Code § 62.1-44.3.
6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
7. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
8. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.
9. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
10. "DMR" means Discharge Monitoring Report.
11. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
12. "Facility" means the Mary Walter Elementary School Sewage Treatment Plant located at 4529 Morrisville Road, Bealeton, Virginia 22712 (Fauquier County), which treats and discharges treated sewage from the Mary Walter Elementary School.
13. "General Services" means the Fauquier County General Services Department.
14. "MGD" means million gallons per day.
15. "MLSS" means mixed liquor suspended solids.
16. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
17. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
18. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.

19. "Permit" means VPDES Permit No. VA0064726, which was issued under the State Water Control Law and the Regulation to the Fauquier County Public Schools on March 20, 2011, expired on March 19, 2016, was reissued on April 1, 2016, and which expires on March 31, 2021.
20. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water...
9 VAC 25-31-10.
21. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
22. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
23. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
24. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.
Va. Code § 62.1-44.3.
25. "TMDL" means Total Maximum Daily Load.
26. "TSS" means total suspended solids.
27. "Va. Code" means the Code of Virginia (1950), as amended.
28. "VAC" means the Virginia Administrative Code.
29. "VPDES" means Virginia Pollutant Discharge Elimination System.

30. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. The County owns the Facility located in Fauquier County, Virginia. The Facility is operated by the Authority and General Services. The Permit authorizes the County to discharge treated wastewater from the Facility, to an unnamed tributary to Harpers Run, in strict compliance with the terms and conditions of the 2016 Permit. The design flow of the Facility is 0.0067 MGD.
2. Harpers Run is in the Marsh Run Watershed, located within the Rappahannock River Basin. Harpers Run has been neither monitored nor assessed. The nearest downstream monitoring station is located on Marsh Run, which is located approximately 4.7 miles downstream from Facility Outfall 001. This segment of Marsh Run is listed in the 2014 305(b)/303(d) Integrated Report for E. coli/bacterial impairment, resulting in an impaired classification for recreation use. A bacteria TMDL for the Marsh Run Watershed has been completed and approved. The aquatic life and wildlife uses are considered fully supporting. The fish consumption use was not assessed.
3. The County failed to submit an application for reissuance of the Permit, due by the required deadline of September 19, 2015. The County did not request an extension to submit the application for the Permit reissuance. DEQ-NRO received the application late on November 5, 2015.
4. Part II, Section M, of the Permit, states: "If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Board. The Board shall not grant permission for applications to be submitted later than the expiration date of the existing permit."
5. NRO issued WLs for the violation cited above in paragraph C(3): WL Nos. W2015-11-N-1002, dated November 6, 2015, and W2015-12-N-1008, on December 21, 2015.
6. In submitting its DMR for the February 2016 monitoring period, the County reported an exceedance of the discharge limitations contained in Part I.A.1 of the Permit for the weekly concentration average maximum limit for Ammonia as N.
7. In submitting its DMR for the March 2016 monitoring period, the County reported an exceedance of the discharge limitations contained in Part I.A.1 of the Permit for the weekly concentration average maximum limit and the monthly concentration average limit for Ammonia as N.

8. In submitting its DMR for the April 2016 monitoring period, the County failed to report the weekly quantity average maximum and the weekly concentration average maximum data for BOD5 and TSS. (Samples were collected on April 1, 2016 to satisfy the once per month frequency but were not collected in a full 7-day calendar week,).
 9. Part I.B.3b of the Permit requires states that “[a]n arithmetic average shall be calculated using all reported data, including the defined zeros, collected within each complete calendar week and entirely contained within the reporting month. The maximum value of the weekly averages thus determined shall be reported on the DMR.”
 10. Part II.C of the Permit states that the “permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place.
 11. NRO issued a WL for the violations cited above in paragraphs C(6), C(7) and C(8): WL No. W2016-06-N-1004, on June 13, 2016.
 12. In submitting its DMR for the May 2016 monitoring period, the County reported an exceedance of the discharge limitations contained in Part I.A.1 of the Permit for the weekly concentration average maximum limit and the monthly concentration average limit for Ammonia as N.
 13. NRO issued a NOV for the violations cited above in paragraph C(10): NOV No. W2016-07-N-0003, on July 8, 2016.
 14. Although not listed in a NOV, the County submitted the August 2016 DMR late. The report was due no later than September 10, 2016 and the County submitted the DMR on September 26, 2016.
 15. Part II.C of the Permit states that the “permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place.
 16. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
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17. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
 18. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.

19. The County's operating logs indicate that it discharged treated wastewater from the Plant every day from February 2016 – May 2016.
20. The Department has issued no permits or certificates to the County other than VPDES Permit No. VA0064726.
21. The unnamed tributary to Harpers Run is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law.
22. Based on the inspection, DMRs, and submitted documents, the Board concludes that the County has violated the Permit, Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging effluent from the Facility while concurrently failing to meet the conditions of the Permit, as described in paragraphs C(3), C(6) – C(8), C(10), and C914)above.
23. In order for the County to complete its return to compliance, DEQ staff and representatives of the County have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the County, and the County agrees to pay a civil charge \$4,287.50 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The County shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, the County shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with consent of the County for good cause shown by the County, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the County admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The County consents to venue in the Circuit Court of the County of Richmond for any civil action taken to enforce the terms of this Order.
5. The County declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by the County to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The County shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseen circumstance beyond its control..... The County shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The County shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the County intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and the County. Nevertheless, the County agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after the County has completed all of the requirements of the Order;
 - b. The County petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the County.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by the County and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of the County certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the County to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the County.

Consent Order

Fauquier County Public Schools / Mary Walter Elementary School Sewage Treatment

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14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, the County agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2016.

Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

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Consent Order

Fauquier County Public Schools / Mary Walter Elementary School Sewage Treatment

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Fauquier County Public Schools voluntarily agrees to the issuance of this Order.

Date: 1/13/17 By: Paul [Signature], Superintendent
(Person) (Title)

Fauquier County Public Schools

Commonwealth of Virginia

County/County of Fauquier

The foregoing document was signed and acknowledged before me this 13 day of

January, 2017 by Victoria Sindt who is

Notary Public of the Fauquier County Public Schools, on behalf of the
Fauquier County Public Schools.

Victoria Sindt
Notary Public

241527

Registration No.

My commission expires: 1/31/2020

Notary seal:



APPENDIX A
SCHEDULE OF COMPLIANCE

A. Corrective Action:

1. No later than 60 days from the effective date of this Order, the County shall submit to DEQ for review and approval a plan and schedule for the replacement/upgrade/repair of the Facility designed to ensure consistent compliance with all Permit requirements and particularly with Ammonia as N effluent limitations. Upon approval by DEQ, the plan and schedule shall be an enforceable part of this Order.

B. Submissions:

Unless otherwise specified in this Order, the County shall submit all requirements of Appendix A of this Order to:

Enforcement
Virginia Department of Environmental Quality
Northern Regional Office
13901 Crown Court
Woodbridge, VA 22193